

**House Study Bill 143 - Introduced**

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON BALTIMORE)

**A BILL FOR**

1 An Act relating to privileged communications between a  
2 physician or health facility and a patient following an  
3 adverse health care incident.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135P.1 Definitions.

2 For the purposes of this chapter, unless the context  
3 otherwise requires:

4 1. "*Adverse health care incident*" means an objective,  
5 definable, and unanticipated consequence of a medical treatment  
6 or procedure which differs from the intended outcome and  
7 results in the death or serious physical injury of a patient.

8 2. "*Health facility*" means an institutional health facility  
9 as defined in section 135.61, hospice licensed under chapter  
10 135J, home health agency as defined in section 144D.1, clinic,  
11 or community health center, and includes any corporation,  
12 professional corporation, partnership, limited liability  
13 company, limited liability partnership, or other entity  
14 comprised of such health facilities.

15 3. "*Open discussion*" means all communications that are  
16 made under section 135P.3, and includes all memoranda, work  
17 products, documents, and other materials that are prepared  
18 for or submitted in the course of or in connection with  
19 communications under section 135P.3.

20 4. "*Patient*" means a person who receives medical care  
21 from a physician, or if the person is a minor, deceased, or  
22 incapacitated, the person's legal representative.

23 5. "*Physician*" means a person licensed under chapter 148.

24 Sec. 2. NEW SECTION. 135P.2 Confidentiality of open  
25 discussions.

26 1. Open discussion communications and offers of  
27 compensation made under section 135P.3:

28 a. Do not constitute an admission of liability.

29 b. Are privileged, confidential, and shall not be disclosed.

30 c. Are not admissible as evidence in any subsequent  
31 judicial, administrative, or arbitration proceeding and are  
32 not subject to discovery, subpoena, or other means of legal  
33 compulsion for release and shall not be disclosed by any party  
34 in any subsequent judicial, administrative, or arbitration  
35 proceeding.

1 2. Communications, memoranda, work products, documents, and  
2 other materials, otherwise subject to discovery, that were not  
3 prepared specifically for use in a discussion under section  
4 135P.3, are not confidential.

5 3. The limitation on disclosure imposed by this section  
6 includes disclosure during any discovery conducted as part of  
7 a subsequent adjudicatory proceeding, and a court or other  
8 adjudicatory body shall not compel any person who engages in  
9 an open discussion under this chapter to disclose confidential  
10 communications or agreements made under section 135P.3.

11 4. This section does not affect any other law, regulation,  
12 or requirement with respect to confidentiality.

13 Sec. 3. NEW SECTION. 135P.3 **Engaging in an open discussion.**

14 1. If an adverse health care incident occurs in a health  
15 facility, the physician, or the physician jointly with the  
16 health facility, may provide the patient with notice of the  
17 desire of the physician, or of the physician jointly with the  
18 health facility, to enter into an open discussion under this  
19 chapter. If the physician or health facility provides such  
20 notice, such notice must be sent within one hundred eighty days  
21 of the adverse health care incident and include all of the  
22 following:

23 a. Notice of the desire of the physician, or of the  
24 physician jointly with the health facility, to proceed with an  
25 open discussion under this chapter.

26 b. Notice of the patient's right to receive a copy or  
27 authorize the release of the patient's medical records related  
28 to the adverse health care incident to any third party.

29 c. Notice of the patient's right to seek legal counsel.

30 d. Notice that if the patient chooses to engage in an open  
31 discussion with the physician or health facility, that all  
32 communications made in the course of such a discussion under  
33 this chapter, including communications regarding the initiation  
34 of an open discussion, are privileged and confidential, are  
35 not subject to discovery, subpoena, or other means of legal

1 compulsion for release, and are not admissible in evidence in a  
2 judicial, administrative, or arbitration proceeding.

3 2. If the patient agrees to engage in an open discussion,  
4 the patient, physician, or health facility engaged in an open  
5 discussion under this chapter may include other persons in  
6 the open discussion. All additional parties shall also be  
7 advised in writing prior to the discussion that discussions  
8 are privileged and confidential, are not subject to discovery,  
9 subpoena, or other means of legal compulsion for release, and  
10 are not admissible in evidence in a judicial, administrative,  
11 or arbitration proceeding.

12 3. The physician or health facility that agrees to engage in  
13 an open discussion may do all of the following:

14 a. Investigate how the adverse health care incident occurred  
15 and gather information regarding the medical care or treatment  
16 provided.

17 b. Disclose the results of the investigation to the patient.

18 c. Openly communicate to the patient the steps the physician  
19 or health facility will take to prevent future occurrences of  
20 the adverse health care incident.

21 d. Determine either of the following:

22 (1) That no offer of compensation for the adverse health  
23 care incident is warranted and orally communicates that  
24 determination to the patient.

25 (2) That an offer of compensation for the adverse health  
26 care incident is warranted and extends such an offer in writing  
27 to the patient.

28 4. If a physician or health facility makes an offer  
29 of compensation under subsection 3 and the patient is not  
30 represented by legal counsel, the physician or health facility  
31 shall advise the patient of the patient's right to seek legal  
32 counsel regarding the offer of compensation.

33 5. Except for offers of compensation under subsection 3,  
34 discussions between the physician or health facility and the  
35 patient about the compensation offered under subsection 3 shall

1 remain oral.

2 Sec. 4. NEW SECTION. 135P.4 **Payment and resolution.**

3 1. A payment made to a patient pursuant to section 135P.3 is  
4 not a payment resulting from any of the following:

5 a. A written claim or demand for payment.

6 b. A claim for purposes of section 272C.9.

7 c. A claim for purposes of section 505.27.

8 2. A physician or health facility may require the patient,  
9 as a condition of an offer of compensation under section  
10 135P.3, to execute all documents and obtain any necessary court  
11 approval to resolve an adverse health care incident. The  
12 parties shall negotiate the form of such documents or obtain  
13 court approval as necessary.

14 EXPLANATION

15 The inclusion of this explanation does not constitute agreement with  
16 the explanation's substance by the members of the general assembly.

17 This bill allows a physician, or a physician jointly with a  
18 health facility, to engage in an open, confidential discussion  
19 with a patient related to an adverse health care incident.

20 The bill defines "adverse health care incident" as an  
21 objective, definable, and unanticipated consequence of a  
22 medical treatment or procedure which differs from the intended  
23 outcome and results in the death or serious physical injury of  
24 a patient. The bill defines "physician" as a person licensed  
25 under Code chapter 148 (medicine and surgery and osteopathic  
26 medicine and surgery). The bill defines "patient" as a  
27 person who receives medical care from a physician, or if the  
28 person is a minor, deceased, or incapacitated, the person's  
29 legal representative. The bill defines "health facility" as  
30 an institutional health facility as defined in Code section  
31 135.61, a hospice licensed under Code chapter 135J, home health  
32 agency as defined in Code section 144D.1, clinic, or community  
33 health center, and includes any corporation, professional  
34 corporation, partnership, limited liability company, limited  
35 liability partnership, or other entity comprised of such

1 facilities.

2 If an adverse health care incident occurs, the bill allows a  
3 physician, or a physician jointly with a health facility, to  
4 offer to engage in an open discussion with the patient. The  
5 notice of an offer to engage in an open discussion must be  
6 sent to the patient within 180 days after the adverse health  
7 care incident. If the patient agrees to proceed with an open  
8 discussion, the physician or health facility may investigate  
9 the adverse health care incident, disclose the results to the  
10 patient, and discuss steps the physician or health facility  
11 will take to prevent similar adverse health care incidents.  
12 The physician or health facility may also communicate to the  
13 patient that either the physician or health facility has  
14 determined that an offer of compensation is not warranted  
15 or that an offer of compensation is warranted. An offer of  
16 compensation may be conditioned upon the patient executing  
17 a release of future liability as to the adverse health care  
18 incident. All communications made under the Code chapter are  
19 privileged and confidential, are not subject to discovery,  
20 subpoena, or other means of legal compulsion for release, and  
21 are not admissible in evidence in a judicial, administrative,  
22 or arbitration proceeding.

23 The bill provides that a payment made under the Code chapter  
24 is not a written claim or demand for payment, a claim that must  
25 be submitted to a licensing board under Code section 272C.9, or  
26 a medical malpractice insurance claim that must be reported to  
27 the commissioner of insurance under Code section 505.27.